

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

-----X
JOHN TORMEY,

Plaintiffs,

Against

DIVI HOTELS MARKETING, INC.,

Defendant.
-----X

Civil Action No.6:05 CV 982 (NAM)(DEP)
(Hon. N. Mordue)
(Magistrate D. Peebles)

**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE AS TO
DEFENDANT DIVI HOTELS
MARKETING, INC. ONLY**

The Plaintiff, JOHN TORMEY, by and through his counsel, Mark Jonas, Esq., and the Defendant, DIVI HOTELS MARKETING, INC., by and through its attorneys, Morgan, Melhuish, Monaghan, Arvidson, Abrutyn & Lisowski, hereby stipulate and agree to the following:

1. The defendant, Divi Hotels Marketing, Inc., has represented to the plaintiff, John Tormey, that said defendant does not own, operate, maintain, inspect and/or supervise the Tamarijin Resort located in Aruba.

2. Defendant's counsel shall supply to plaintiff's counsel, within ten (10) days after the filing of this Stipulation of Dismissal Without Prejudice, the name and address of the owner(s) of the Tamarijin Resort located in Aruba and the name of the proper entity for legal service of process as well as the name and appropriate contact person at said resort and if known to the defendant, or is discoverable by the defendant, the name and address and telephone of any liability insurance carrier for Tamarijin Resort and/or risk management entity for Tamarijin Resort.

3. In exchange for this Stipulation of Dismissal Without Prejudice, defendant agrees that plaintiff may demand defendant's counsel execute a Stipulation vacating this Stipulation by serving a demand on defendant's counsel by letter. At which time the defendant's counsel shall execute a Stipulation vacating the Stipulation and the defendant shall be subject to the allegations set forth in the Summons and Complaint previously served. The defendant will not raise any jurisdictional defenses to the Summons and Complaint, previously served on defendant, nor will the defendant interpose a Statute of Limitations defense to said Summons and Complaint. The defendant will not demand that the plaintiff needs to reserve the Summons and Complaint upon the defendant. Defendant's original Answer to the Summons and Complaint will be preserved. Defendant will thereafter resume defending his action. Neither plaintiff nor defendant shall be required to re-file pleadings already on file with the Court.

4. All claims of the plaintiff, John Tormey, against defendant, Divi Hotels Marketing, Inc., are hereby dismissed without prejudice and subject to the terms and conditions of this Stipulation.

Dated: November 14, 2005

LAW OFFICE OF MARC JONAS, ESQ.

**MORGAN, MELHUSH, MONAGHAN,
ARVIDSON, ABRUTYN & LISOWSKI**

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So Ordered

David E. Peoples
David E. Peoples
United States Magistrate Judge
Dated: 11/15/05

Schenectady, New York